Local 1294, International Longshoremen's Association, AFL-CIO *and* Cibro Petroleum Products, Inc. and Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO

Local 1518, Checkers, Clerks and Timekeepers, International Longshoremen's Association, AFL-CIO[1] *and* Cibro Petroleum Products, Inc. and Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO. Cases 3-CD-528 and 3-CD-529

July 30, 1981

DECISION, DETERMINATION OF DISPUTE, AND ORDER

This is a consolidated proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Cibro Petroleum Products, Inc., alleging that Local 1294, International Longshoremen's Association, AFL-CIO, and Local 1518, Checkers, Clerks and Timekeepers, International Longshoremen's Association, AFL-CIO, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by them rather than to employees represented by Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO.

Pursuant to due notice, a hearing was held before Hearing Officer Christopher G. Roach on February 13 and March 5, 1981, and before Hearing Officer Alfred M. Norek on March 6, 1981. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer filed a brief which has been duly considered.

The Board has reviewed the Hearing Officers' rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a New York corporation with its principal place of business in Albany, New York, is engaged in the refining and distribution of petroleum products. During the past 12 months, the Employer, in the course and conduct of its business operations, received products valued in excess of $50,000 which were shipped to its Albany, New York, facility directly from points outside the State of New York.

Based on the foregoing, we find that Cibro Petroleum Products, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Locals 1294, 1518, and 333 of the International Longshoremen's Association, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer receives crude oil and finished petroleum products at its facility on the Hudson River in Albany, New York. Each year between 10 and 12 ships deliver such cargo to the Employer's terminal. When a vessel arrives at the Port of Albany, the Employer assembles on its dock a linecrew composed of two to four individuals who assist in anchoring the ship. The shipboard crew begins this process by throwing a messenger line towards the shore. While the linecrew pulls the messenger line ashore, the shipboard crew attaches this line to the larger mooring line contained aboard ship. The linecrew then drags the mooring line ashore and inserts it over a mooring post on the Employer's dock. Finally, the shipboard crew fastens the mooring line to the vessel using shipboard winches. Before the ship is ready to discharge its cargo into the Employer's oil tanks, the shipboard and linecrews must tie down from 5 to 17 additional mooring lines depending on the size and configuration of the vessel.

Between 1965 and late 1978, the Employer assigned this line-handling work to its terminal maintenance employees who were represented by the Cibro Employees Union. On November 20, 1978, the Board certified Local 333 as the exclusive collective-bargaining representative of "All terminal maintenance employees, including trainees, employed at [the Employer's] terminal facility located at the Port of Albany, New York . . . ." During the course of the parties' contract negotiations, Albert Cornette, president of Local 333, told the Employer that the line-handling work involved in docking vessels was within the exclusive jurisdiction of his Union. Thereafter, Locals 1294 and 1518 jointly sent letters, dated February 19 and 28, 1979, to the International Longshoremen's Association in which they asserted that Local 333 had violated

[1] Local 1518's name appears as amended at the hearing

their territorial jurisdiction in the Port of Albany by organizing the Employer's employees. Augustine Crocco, president of Local 1294, contacted the Employer's vice president, William Cirillo, concerning this matter. During their conversation, Crocco asserted jurisdiction over the Employer's line-handling work on behalf of Local 1294 and then threatened to picket the Employer's terminal if such work was not reassigned to employees represented by his Union.

Subsequently, on March 6, 1979, the Employer and Local 333 entered into a collective-bargaining agreement containing a provision which arguably covers the Employer's line-handling work. Shortly after the parties executed this contract, Cirillo learned that Crocco had called the Employer's Albany facility and threatened to picket the arrival of the vessel *Pan Oceanic Fame* if the Employer continued to assign the work in question to its own employees represented by Local 333. Cirillo immediately called Crocco who then reiterated his threat that he ". . . would have some pickets in front of the terminal" unless employees represented by Local 1294 tied up the tanker. When Cirillo advised Local 333 of this problem, Cornette resolved the situation by telling Crocco to arrange for employees represented by Local 1294 to perform the line-handling work on the *Pan Oceanic Fame* and that Local 333 would reimburse the Employer for theadditional expenses involved. Thereafter, on or about March 14, 1979, the Employer retained the services of John W. McGrath Corporation, a local Albany stevedoring contractor, to tie up the *Pan Oceanic Fame*. During the next 18 months, McGrath employees represented by Local 1294 continued to perform line-handling work on ships docking at the Employer's facility.

On January 13, 1980,[2] Thomas Gleason, president of the International Longshoremen's Association, notified Crocco and Cornette that he had awarded exclusive jurisdiction over the Employer's line-handling work to members of Local 333. Crocco and James McGahay, president of Local 1518, then sent a joint letter to Gleason on January 16, informing Gleason that they would appeal his decision to the Executive Council of the International. Thereafter, Local 333 advised Cirillo that employees represented by it would resume performing the Employer's line-handling work. Upon learning of Local 333's action, Crocco sent Cirillo a letter, dated January 21, wherein he informed Cirillo that Local 1294 had appealed Gleason's decision and implied that he would picket the Employer if the work were reassigned to employees represented by Local 333. Consequently, McGrath employees represented by Local 1294 continued to moor ships docking at the Employer's facility.

Thereafter, on October 7, Harry Hasselgren, secretary-treasurer of the International, advised Crocco and McGahay that the Executive Council had sustained Gleason's decision awarding the Employer's line-handling work to members of Local 333. During a subsequent meeting at its Albany facility on November 5, the Employer told Crocco and McGahay that it had received a copy of the International's letter denying Locals 1294's and 1518's appeal and that it was reassigning its line-handling work to its own employees represented by Local 333. In response, Crocco said that he would picket the Employer's terminal gate or employ picketboats on the Albany waterway if the Employer took this action. While Local 1518's McGahay did not comment, there is evidence that he nodded his head affirmatively as Crocco threatened to picket the Employer. The Employer subsequently reassigned its line-handling work to its own employees represented by Local 333 on or about November 18, but Locals 1294 and 1518 did not picket.

On November 18, the Employer also filed the instant charges alleging that Locals 1294 and 1518 had violated Section 8(b)(4)(D) of the Act by their conduct during the November 5 meeting. Locals 1294 and 1518 then filed a complaint in a New York State supreme court on December 11 against, *inter alia*, Local 333 and the International Longshoremen's Association in which they contended that the award of the Employer's line-handling work to members of Local 333 was in contravention of the International's constitution.[3] Thereafter, during the hearing held in the instant case, Locals 1294 and 1518 stated that they did not have any interest in obtaining the Employer's line-handling work on behalf of employees they represent, and moved to quash the consolidated notice of hearing issued herein.

B. *The Work in Dispute*

The work in dispute, as described in the order consolidating cases and notice of hearing, concerns the following tasks: "The work of line handling of ships docking at the facilities of Cibro Petroleum Products, Inc. at the Port of Albany." However, the Employer made a motion at the hearing to broaden the scope of the disputed work to include the assignment of all line-handling work involved in docking barges at its terminal. Hearing Officer

[2] All dates hereinafter are in 1980 unless otherwise indicated.

[3] The parties subsequently removed the suit to the United States District Court, Northern District of New York.

Roach referred the Employer's motion to the Board for determination.

We find that the record contains no evidence that Locals 1294 and 1518 have demanded the assignment of the Employer's line-handling work on barges to employees they represent. Moreover, both Crocco, president of Local 1294, and McGahay, president of Local 1518, testified that their members have never performed such work for any employer. Accordingly, in view of the foregoing and the fact that the notice of hearing clearly describes the work in dispute as line-handling work on ships, we hereby deny the Employer's motion to expand the scope of the disputed work. We shall therefore confine our determination in the instant dispute to the work of line handling of ships.

C. *Contentions of the Parties*

Locals 1294 and 1518 argued at the hearing that there is no reasonable cause to believe that they have violated Section 8(b)(4)(D) of the Act and that, therefore, the dispute is not properly before the Board and the notice of hearing should be quashed. Both Unions contended that, because they have disclaimed the disputed work, there is no existing work assignment dispute in this proceeding. In this regard, Local 1518 noted that it has never claimed the disputed work on behalf of employees it represents. Local 1294 also asserted that the record fails to establish that it threatened, coerced, or restrained the Employer during the 10(b) period with an object of forcing the Employer to assign the disputed work to employees represented by it. In the event that the Board does decide to make a determination of this dispute, Local 1294 argues that the work in dispute should be awarded to employees it represents based on the Employer's voluntary assignment of such work to them between March 1979 and November 1980 with the acquiescence of Local 333. Local 1294 further contends that the International Longshoremen's Association violated Local 1294's exclusive territorial jurisdiction in the Port of Albany by awarding the disputed work to employees represented by Local 333.

The Employer argues in its brief that a jurisdictional dispute does exist in this case. It contends that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated since Locals 1294 and 1518 threatened to picket its facility and the Port of Albany waterway on November 5, 1980, if the Employer reassigned the disputed work to employees represented by Local 333. Additionally, the Employer asserts that the disclaimer of the disputed work made by Local 1294 at the hearing was conditional in nature and, for that reason, the Board should not honor Local 1294's disclaimer. It further argues that there is no agreed-upon method for resolving the instant dispute because it does not participate in and is not bound by determinations of the Impartial Jurisdictional Disputes Board. Finally, the Employer urges that its assignment of the disputed work to employees represented by Local 333 should be upheld on the basis of their collective-bargaining agreement, Local 333's Board certification, the Employer's preference and past practice, and efficiency and economy of the Employer's operations.

Local 333's position essentially is in agreement with that of the Employer.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that: (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and (2) there is no agreed-upon method for the voluntary resolution of the dispute.

With respect to (1), above, in Case 3-CD-529, we note that the Board's authority under Section 10(k) of the Act is limited to the resolution of actual disputes between competing groups of employees. Thus, it is well established that a cognizable work assignment dispute no longer exists when one of the competing unions or parties effectively renounces its claim to the work in question.[4] In the instant matter, we find that Local 1518 effectively renounced its claim to the disputed work and that this disclaimer was not vitiated by any equivocal conduct on its part. Moreover, Local 1518's president, McGahay, testified that employees represented by that Union do not perform any line-handling work.[5] Accordingly, in these circumstances we find that competing claims to the disputed work do not exist within the meaning of the Act in Case 3-CD-529 and we shall therefore quash the notice of hearing issued therein.[6]

With respect to (1), above, in Case 3-CD-528, the record discloses that, during the meeting held on November 5, the Employer informed Local 1294 of its intention to reassign the disputed work to employees represented by Local 333. President Crocco of Local 1294 then responded that he "would have to picket the plant . . . beginning at

[4] *Laborers' International Union of North America, Local 935, AFL-CIO (C & S Construction Co., Inc.)*, 206 NLRB 807 (1973); *Sheet Metal Workers Local Union No. 465 (Thorpe Insulation Company)*, 198 NLRB 1245 (1972).

[5] Local 1518 represents employees engaged in performing maritime clerical functions, a type of work not involved in this dispute.

[6] In view of our finding that Local 1518 effectively disclaimed any interest in the disputed work, we find it unnecessary to decide whether there is reasonable cause to believe that Local 1518 violated Sec. 8(b)(4)(D) of the Act.

the gate or picketing on the water via picket boats. "If [any pilots] crossed his picket line to bring a ship into Cibro's facility," Crocco said that he "would be obligated to refuse to handle vessels which they brought into other parts of the Port of Albany and would therefore effectively be shutting down the Port [of Albany]." While admitting that he made these threats, Crocco claimed that he did so at the request of the Employer's representatives who were seeking a Board determination to resolve the instant dispute. On the other hand, Joseph Plunkett, the Employer's plant manager, denied that any company official had urged Crocco to make such statements. It is well settled, however, that a conflict in testimony does not prevent the Board from proceeding under Section 10(k) for, in this proceeding, the Board is not charged with finding that a violation did in fact occur, but only that reasonable cause exists for finding such a violation.[7] Moreover, Local 1294 has demonstrated a propensity to employ coercion to obtain the disputed work for employees it represents by its prior threats, though occurring outside the limitations period set by Section 10(b) of the Act, to picket the Employer's operations on the Hudson River. Accordingly, without ruling on the credibility of the testimony at issue,[8] we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

In reaching this conclusion, we note that at the outset of the hearing counsel for Local 1294 moved to quash the notice of hearing issued herein on the ground that Local 1294 has disclaimed an interest in the disputed work. However, in contrast to his unequivocal disclaimer of the disputed work on behalf of Local 1518 in Case 3-CD-529, counsel for Local 1294 subsequently made the following comments in reference to this issue in Case 3-CD-528:

> . . . we at this time disclaim the work involved here conditioned on the success of our law suit which is now pending in the federal court in the Northern District of New York and its Case 81-CV- . . . 63 which is an action . . . against the International Longshoremen's Association and Local 333 of the ILA to set aside and invalidate the decision of the International president awarding the work to Local 333.
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> . . . our disclaimer, so the record is clear, is a disclaimer which will be in existence as long as that decision of our International president is in existence. And if we are successful in the federal court, we would of course take the position that we . . . should be assigned the work in question.

We conclude that Local 1294 is continuing to assert a jurisdictional claim to the Employer's line-handling work on behalf of the employees it represents. Accordingly, we will not honor such a conditional disclaimer, since Local 1294 stated clearly at the hearing that it will persist in its efforts to obtain the disputed work. Accordingly, we hereby deny Local 1294's motion to quash the notice of hearing in Case 3-CD-528.

With respect to (2), above, in Case 3-CD-528, there is no evidence that all parties have agreed to any method for the voluntary resolution of the dispute. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of the disputed work after giving due consideration to various relevant factors.[9] As the Board has frequently stated, the determination in a jurisdictional dispute case is an act of judgment based on commonsense and experience in weighing these factors. The following factors are relevant in making a determination of the dispute before us in Case 3-CD-528.

1. Board certification and relevant collective-bargaining agreements

On November 20, 1978, the Board certified Local 333 as the exclusive representative of all the Employer's terminal maintenance employees who presently are performing the disputed work.

Article XIII of the collective-bargaining agreement between the Employer and Local 333 provides, *inter alia*, as follows:

> There shall be two classifications of employees: Process Maintenance Men and and Terminal Maintenance Men. These employees shall perform all maintenance and repair work as well as all work in the *receipt*, flow, transfer, inventory control and discharge of product, from *receipt* to discharge. [Emphasis supplied.]

[7] Chairman Fanning finds these circumstances readily distinguishable from *Local 16, National Association of Broadcast Employees and Technicians, AFL-CIO-CLC (American Broadcasting Company, a Division of American Broadcasting Companies, Inc.)*, 227 NLRB 1462 (1977), where he dissented; there the interests of the employer and the union alleged to have violated Sec. 8(b)(4)(D) of the Act coincided.

[8] See, e.g., *Local Union No. 334, Laborers International Union of North America, AFL-CIO (C. H. Heist Corporation)*, 175 NLRB 608, 609 (1969).

[9] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961); International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company), 135 NLRB 1402 (1962).

We find that this provision may reasonably be interpreted as covering the disputed work. By contrast, Local 1294 is not a party to a collective-bargaining agreement with the Employer.

Accordingly, we find that the factors of Local 333's Board certification[10] and its collective-bargaining agreement with the Employer favor an award of the line-handling work on ships to employeees represented by Local 333.

2. Employer preference and past practice

The record shows that between 1965 and March 1979 the Employer assigned the disputed work to its own terminal maintenance employees who currently are represented by Local 333. Thereafter, in response to Local 1294's threat to picket its operations, the Employer subcontracted the disputed work to John W. McGrath Corporation, an area stevedoring contractor. This company employed employees represented by Local 1294 to perform this work at the Employer's Albany facility. On or about November 18, 1980, the Employer reassigned its line-handling work to its own employees represented by Local 333 in accord with the award made by the Executive Council of the International Longshoremen's Association. These employees continued to perform the disputed work at the time of the hearing.

In view of the foregoing, it is clear that the Employer, except when confronted with picket threats, consistently has awarded the disputed work to its own terminal maintenance employees since it began operations at the Albany facility some 16 years ago. We therefore conclude that the Employer's preference and its established past practice favor an award of the disputed work to its employees represented by Local 333.

3. Relative skills

It is clear from the record that employees represented by either Local 1294 or Local 333 are equally capable of performing the Employer's line-handling work on ships at the Albany facility. Accordingly, we find that this factor does not favor an award of the disputed work to employees represented by either labor organization.

4. Industry and area practice

There is no specific evidence regarding the industry practice concerning the work in dispute. With respect to the area practice, Local 1294's president, Crocco, testified that his Union has exclusive jurisdiction over the disputed work in the Port of Albany. Crocco subsequently admitted, however, that employees represented by the Teamsters also perform such work in the Albany, New York, area.

In view of the foregoing, we conclude that both industry and area practice are inconclusive and do not favor an award of the disputed work to employees represented by either Local 1294 or Local 333.

5. Economy and efficiency of operations

The record discloses, as noted, that between 10 and 12 ships annually deliver petroleum products to the Employer's terminal. When they are not performing the disputed work, employees represented by Local 333 are engaged in maintenance and repair functions at the Employer's facility. The Employer currently has no employees represented by Local 1294. Under these circumstances, employees represented by Local 1294 would be employed for the purpose of mooring only one or two ships per month if they were awarded the disputed work. Accordingly, we find that the factors of economy and efficiency of operations favor an award of the disputed work to employees represented by Local 333.

6. Other awards

As set forth above, the president of the International Longshoremen's Association has awarded the disputed work to members of Local 333. Thereafter, the Executive Council of the International Longshoremen's Association sustained this decision on or about September 3, 1980. Although decisions of the International Longshoremen's Association are not binding on our determination on the merits of the jurisdictional dispute in this 10(k) proceeding, we find that they are an evidentiary factor herein which favors an award of the disputed work[11] to the employees represented by Local 333.

Conclusion

Upon the record as a whole, and after full consideration of all the relevant factors involved, we conclude that the Employer's employees who are represented by Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO, are entitled to perform the work in dispute. We reach this conclusion based on the Board's certification of Local 333 as the bargaining representa-

[10] See *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers Local 55, AFL-CIO (Midwest Prestressed Corporation)*, 184 NLRB 901, 904 (1970).

[11] *Compressed and Open Air Caisson and Subway Workers, Local Union No. 420, affiliated with Laborers International Union of North America, AFL-CIO (Contractors Association of Eastern Pennsylvania and Slattery Associates, Inc.)*, 231 NLRB 1071, 1075 (1977).

tive of these employees, the Employer's collective-bargaining agreement with Local 333, the Employer's preference and established past practice of assigning the disputed work to these employees, the factors of economy and efficiency of the Employer's operations, and the prior award by the International Longshoremen's Association concerning this jurisdictional dispute between Locals 1294 and 333. Accordingly, we shall determine the instant dispute by awarding the disputed work to employees represented by Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO, but not to that Union or its members. Additionally, we find that Local 1294, International Longshoremen's Association, AFL-CIO, is not entitled by means proscribed under Section 8(b)(4)(D) of the Act to force or require the Employer to assign the disputed work to employees represented by it.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Cibro Petroleum Products, Inc., who are represented by Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO, are entitled to perform the work involved in performing the line-handling work on ships at the Employer's Albany, New York, facility.

2. Local 1294, International Longshoremen's Association, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Cibro Petroleum Products, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from the date of this Decision, Determination of Dispute, and Order, Local 1294, International Longshoremen's Association, AFL-CIO, shall notify the Regional Director for Region 3, in writing, whether or not it will refrain from forcing or requiring Cibro Petroleum Products, Inc., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work to employees represented by it rather than to employees represented by Local 333, United Marine Division, International Longshoremen's Association, AFL-CIO.

ORDER

It is hereby ordered that the notice of hearing issued in Case 3-CD-529 be, and it hereby is, quashed.